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To: Department of Education and Negotiation Committee Members
Date: March 1, 2024
Re: Session Three Proposal on State Authorization (Issue Paper 2)

The Department’s Session Three proposed text on reciprocity agreements addresses several of the most glaring deficiencies in the State Authorization Reciprocity Agreement (“SARA”). However, the Department’s proposed text does not fully address a critical issue with its current model: the delegation of consumer protection standard-setting authority to individuals and entities who are non-state actors, including representatives of regulated institutions. The Department’s regulations must reserve decision-making authority to state regulators and prohibit reciprocity agreements from delegating consumer protection standard-setting to entities that include non-state actors, who are not accountable to state officials, and may have conflicts of interest.

The Department’s Session 3 proposed language would partially address the issue by limiting membership on reciprocity agreements’ governing boards to state regulators, licensing bodies, and attorneys general. This proposal would rectify the current SARA policy that provides the NC-SARA Board, which includes representatives of regulated entities and other non-state actors,¹ with the power to veto any proposal to strengthen the agreement’s consumer protection standards for regulated institutions.² However, the Department’s proposal does not address any of the other ways in which a reciprocity agreement could (and which NC-SARA does) delegate decision-making power to individuals or entities that include individuals with conflicts of interest, including employees of regulated entities, and other non-state actors.

For example, under NC-SARA’s Policy Modification Process, proposals to strengthen SARA’s consumer protection standards for SARA schools must be voted on and approved by the four Regional Compacts, which typically delegate the decision-making authority to approve policy modification proposals to Regional Steering Committees.³ While the Regional Steering Committees include state regulators, the Regional Steering Committees also include members that are not state regulators, including in some cases, employees of regulated institutions.

Another example of improper delegation of decision-making is NC-SARA’s policy giving the NC-SARA Board President authority in certain circumstances to overturn decisions by a state regulator concerning the provisional certification status of an in-state SARA school.⁴ The NC-SARA Board

¹ See *NC-SARA’s Board of Directors*, NC-SARA, <https://nc-sara.org/nc-saras-board-directors>.

² See *SARA Policy Modification Process*, NC-SARA, <https://www.nc-sara.org/sara-policy-modification>.

³ See *SARA Policy Modification Process*, NC-SARA, <https://www.nc-sara.org/sara-policy-modification>. Note that one of the Regional Compacts, WICHE, has a policy that specifies that for SARA policy modification proposals that are “potentially controversial or carry an unusually high significance,” the proposal will be brought before the WICHE Commission, rather than the W-SARA Regional Steering Committee. See <https://www.wiche.edu/collaboration-leadership/w-sara/>.

⁴ See *SARA Policy Manual*, 23.1 § 3.2(d)(4).

President is a position that may be held by any individual, including individuals who are not representatives of member states, and in any case, should not supplant their judgment for that of the state responsible for oversight under the Agreement.

Another example of improper delegation of decision-making authority can be found in the NC-SARA policy that provides that a member state’s decision to revoke an in-state institution’s approval to participate in SARA or to place an in-state institution on provisional status may be overturned by the Regional Compact for that state.⁵ The Regional Compacts are composed of individuals from states in a specific geographic area. The individuals may in some cases include employees of regulated schools or school systems, accreditors, or industry, as well as various state officials. While the SARA Policy Manual states that the institution’s appeal of a state’s decision to the Regional Compacts is for review of whether SARA processes were followed,⁶ the policy permits state oversight decisions about in-state schools to be reversed by a non-state entity. State oversight decisions about in-state schools should not be subject to reversal by non-state entities, especially when the entity includes individuals who are not state regulators in that state, including individuals who represent regulated institutions.

The state authorization requirement in the Higher Education Act⁷ is, appropriately, reserved for oversight by states themselves – not by other individuals, organizations, or by self-regulation by institutions. A reciprocity agreement cannot be said to fulfill the requirements of the program integrity triad, which include state authorization, if it permits the delegation of core authorizing or oversight activities to organizations or individuals that are non-state officials.

To address this issue, the Department should add language to prohibit delegation of decision-making authority from member states to non-state actors, as follows (suggested text is highlighted in blue):

§ 600.9 State authorization.

* * *

(d) If an institution is authorized to offer distance education in another State under a State authorization reciprocity agreement, as defined in § 600.2:

(1) It may be exempted from initial State authorization or licensure requirements in that State.

(2) Such agreement must:

(i) Not delegate authority to establish policies or to make determinations related to eligibility for State or institutional participation in the agreement to any entity that is not exclusively composed of representatives from member State regulatory or enforcement agencies;

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⁵ See *SARA Policy Manual*, 23.1 § 3.7(b)(7) and (9).

⁶ See *id.*, permitting an institution to appeal a state’s decision to place the school on provisional status or to deny recertification to a Regional Compact “to ensure SARA policies were upheld during the review process.”

⁷ Sec. 495, Higher Education Act.